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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**STB EX PARTE NO. 683
PASSENGER RAIL INVESTMENT
AND IMPROVEMENT ACT OF 2008**

VERIFIED STATEMENT OF JAMES A. ALOISI

My name is James A. Aloisi. I am Secretary of the Executive Office of Transportation and Public Works ("EOTPW"), a public agency of the Commonwealth of Massachusetts (the "Commonwealth"). Pursuant to the Notice issued by the Surface Transportation Board (the "Board") on December 23, 2008, EOTPW, on behalf of the Commonwealth, hereby submits its comments with respect to the Board's new authority to provide non-binding mediation in certain trackage use disputes under the Passenger Rail Investment and Improvement Act of 2008 (Pub. L. 110-432, hereinafter referred to as "the Act").

EOTPW serves as the Commonwealth's principal executive agency for developing and implementing state transportation policy, planning, and programs. The Massachusetts Bay Transportation Authority ("MBTA") provides public transportation services for 175 cities and towns within the Commonwealth, including all of the Commonwealth's commuter rail service, and is included among the agencies and authorities that comprise EOTPW. As Secretary of EOTPW, I also serve as Chairman of the MBTA's Board of Directors.

The MBTA is a body politic and a political subdivision of the Commonwealth which operates the nation's 5th largest mass transit system. The MBTA serves a population of more than 4.5 million in 175 cities and towns within an area of more than 3,000 square miles. The MBTA's commuter rail operations transport about 38 million passengers per year on 13 commuter rail lines located throughout central and eastern Massachusetts. In fiscal year 2008, the MBTA provided nearly 375 million passenger trips, 21 million more trips than in 2007, a 6 percent leap and the highest ridership total in the agency's 44-year history.

EOTPW, either alone or through the MBTA, owns significant rail right of way and the MBTA manages extensive rail operations that could be significantly affected by the Board's new responsibilities under the Act. Those commuter rail operations share a significant portion of right-of-way and associated rail facilities with Class I, regional and short line freight railroads. More specifically, the MBTA owns and operates more than 350 route miles – about 30% of all railroad right-of-way within the Commonwealth – as part of its commuter rail system. However, the MBTA shares over 668 route miles of track with various freight rail carriers throughout Massachusetts.

As a general matter, the Commonwealth and the MBTA have developed and maintained positive and harmonious relationships with freight railroads through a number of transactions involving the shared use of rights-of-way and associated track properties. In that spirit, EOTPW is committed to finding every opportunity to further improve the interaction between freight and commuter rail operations. However, EOTPW and MBTA have occasionally met significant challenges when negotiating a trackage rights agreement or an asset purchase agreement with freight railroads. On these occasions, the

public agencies did not have a federal agency or forum available to assist in resolving these disputes, and, accordingly, EOTPW strongly feels that the parties and the public will greatly benefit from the expertise and influence of an impartial federal regulatory authority participating in these negotiations. EOTPW believes that the Act now places the Board in a unique position to assist public and private entities to resolve conflicts that impede the efficient movement of goods and passengers. Candidly, the Board will need to reconsider its role in a fundamental way in order to effectively fulfill the intent of Congress. The importance of passenger rail, and the need to find fair approaches to solving the challenges of passenger and freight sharing the rail, will require a departure from the Board's historic freight rail orientation. EOTPW believes the Board can meet that challenge. The regional economy depends upon the ability of public authorities and rail carriers to foster cooperative relationships with each other and to coordinate the safe, efficient, and reliable use of limited rights-of-way. Through the establishment of this new process, EOTPW is confident that the likelihood of freight and commuter railroad negotiations reaching a fatal impasse is dramatically reduced.

As mentioned above, public transit ridership has increased significantly in the Commonwealth along with other states. The Act acknowledges this trend by stating that the Northeast region counts itself among "emerging transportation 'megaregions' where infrastructure expansion and improvements are most needed."¹ Further, Section 403 of the Act notes that commuter rail expansion between New Haven, Connecticut and Springfield, Massachusetts could result in substantial economic benefits for these two major commercial, industrial, and residential centers. Given these facts - and Congress' support for expanded commuter rail in the region - the Commonwealth believes that the

¹ Passenger Rail Investment and Improvement Act, Pub. L. No. 110-432, § 403 (2008)

Board will have a valuable role to play whenever freight and commuter rail interests cannot resolve their differences privately. The Commonwealth feels strongly that a robust mediation program could help the parties identify and overcome conflicts that impede economic growth within our state and throughout the region.

With regard to the specific elements of the process, EOTPW respectfully urges the Board to adopt as open and robust a mediation process as possible. While EOTPW understands that the participating parties will not be officially bound by the Board's recommendations, it nonetheless hopes that the Board will demand that all parties make a good faith effort toward resolving difficult trackage rights disputes. EOTPW strongly believes that only candid and forthcoming participation by the parties will produce a constructive outcome for all interests.

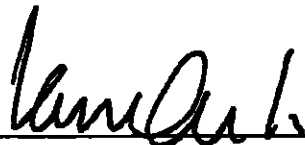
Further, EOTPW understands that the Board would implement non-binding mediation in accordance with 49 C.F.R. 1109.4, including that regulation's provision for a confidential process. EOTPW does not support a forum where any carrier would be compelled to disclose sensitive commercial information or otherwise undermine its position with respect to third parties. Instead, EOTPW proposes a confidential session that would conclude with a joint report of the parties to the Board. This report would omit any sensitive information, such as proprietary data, but would preserve a public record that informs shippers and other interested persons. Alternatively, the Board could elect to produce its own public report at the close of proceedings that redacts sensitive commercial concerns.

The Commonwealth appreciates the Board's interest in this matter and for the opportunity to provide it with comment on its new responsibilities under the Act. The Commonwealth would also like to thank Congress for its concern and its action on this important issue. While the Commonwealth recognizes that the Board may have a discreterole under the law, it nonetheless respectfully urges the Board to create the most open and meaningful mediation opportunity possible for all concerned parties.

VERIFICATION

I, James A. Aloisi, declare under penalty of perjury, that the foregoing is true and correct. Further, I certify that I am qualified and authorized to file this Verified Statement.

Executed on January ^{27th}~~21~~, 2009.



James A. Aloisi,
Secretary, Executive Office of
Transportation and Public Works,
Commonwealth of Massachusetts